

1. The Commissioner of Commerce and Insurance has jurisdiction pursuant to Tenn. Code Ann. §§ 56-1-101, *et seq.* (hereinafter referred to as the “Tennessee Insurance Law”), specifically Tenn. Code Ann. § 56-7-309.

PARTIES

2. Tenn. Code Ann. §§ 56-1-101, *et seq.*, assigns the responsibility for administration of Tennessee Law to the Commissioner of Commerce and Insurance (hereinafter referred to as the “Commissioner”). The Petitioner, the Division, is the lawful agent through which the Commissioner administers Tennessee Insurance Law, and is authorized to bring this action for the protection of the insured and the public. The Division’s official place of business is Davy Crockett Tower, Nashville, Davidson County, Tennessee.

3. The Respondents are all insurance companies that offer insurance in the State of Tennessee. The Respondents currently hold certificates of authority to sell, among other types of insurance, workers’ compensation insurance in this state.

FACTUAL ALLEGATIONS

4. On or about November 26, 2002, Congress passed the Terrorism Risk Insurance Act (hereinafter referred to as “TRIA”) that mandated that all insurers providing commercial lines coverage to make an offer of coverage for foreign acts of terrorism.

5. On December 20, 2002, the National Council on Compensation Insurance (hereinafter referred to as “NCCI”), the designated rate service organization for the State of Tennessee, made a rate filing on behalf of its members which proposed to charge a “loss cost” of two cents (\$0.02) per one hundred dollars (\$100.00) of payroll for terrorism liabilities. The two cent (\$0.02) “loss cost” is applied to the loss cost multiplier filed with the Division to get the rate.

6. On January 23, 2003, the Respondents made a rate filing with the Division which proposed to charge a “rate” of one percent (1%) to four percent (4%) of Total Manual Premium to provide for terrorism risks under workers’ compensation and employers’ liability insurance policies.

7. On July 10, 2003 the Division sent the Respondents a letter disapproving the filing due to a violation of Tenn. Code Ann. § 56-5-320(b) for not following NCCI.

8. On August 4, 2003, Respondents sent a response to the Division’s disapproval to their filing which restated their support of the filing. This letter also preserved Respondents’ right to a hearing on the filing disapproval.

9. On August 7, 2003, the Division sent the Respondents a letter which addressed the Respondents’ August 4, 2003 letter. The Division disapproved the filing a second time based on a finding that Respondents’ rates were excessive and unfairly discriminatory in comparison to the NCCI filing for TRIA coverage under Tenn. Code Ann. § 56-5-308.

10. On August 15, 2003, the Division sent a letter to Respondents which directed Respondents that the continued use of the three percent (3%) of the total classification premium would result in further regulatory action.

CAUSES OF ACTION

11. Tenn. Code Ann. § 56-5-308(a) provides, in pertinent part, that the commissioner shall disapprove a rate if the commissioner finds that the rate is excessive, inadequate or unfairly discriminatory, or, in the case of an advisory prospective loss cost filing, the commissioner finds such filing does not reasonably reflect projected losses, including loss adjustment expenses.

12. Tenn. Code Ann. § 56-5-308(b)(2) provides, in pertinent part, that if the commissioner disapproves rates already in effect, the commissioner shall issue a written order specifying in what respect the rate proposed in such filing is excessive, inadequate or unfairly discriminatory or otherwise fails to meet the requirements of this part. This section further provides that the commissioner shall issue such an order only after a hearing is held on not less than twenty (20) days written notice to the insurer.

13. Tenn. Code Ann. § 56-5-320(b) provides, in pertinent part, that each workers' compensation insurer shall be a member of the workers' compensation insurance rate service organization. Each workers' compensation insurer shall adhere to the policy forms and rating rules filed by such designated service organization.

COUNT ONE

14. The Division restates the facts as alleged in Paragraphs 1-10, above, and incorporates them by reference herein.

15. Tenn. Code Ann. § 56-5-308(a) provides, in pertinent part, that the commissioner shall disapprove a rate if the commissioner finds that the rate is excessive, inadequate or unfairly discriminatory, or, in the case of an advisory prospective loss cost filing, the commissioner finds such filing does not reasonably reflect projected losses, including loss adjustment expenses.

16. The facts in Paragraphs 1-10, above, evidence the fact that the Respondents' rate filed with the Division is excessive in so far as it is likely to produce a profit that is unreasonably high for the insurance provided and the expense provision included therein is unreasonably high in relation to

the services rendered. Such facts provide grounds for the disapproval of the rate filing made by the Respondents pursuant to Tenn. Code Ann. § 56-5-308(b)(2).

COUNT TWO

17. The Division restates the facts as alleged in Paragraphs 1-10, above, and incorporates them by reference herein.

18. Tenn. Code Ann. § 56-5-308(a) provides, in pertinent part, that the commissioner shall disapprove a rate if the commissioner finds that the rate is excessive, inadequate or unfairly discriminatory, or, in the case of an advisory prospective loss cost filing, the commissioner finds such filing does not reasonably reflect projected losses, including loss adjustment expenses.

19. The facts in Paragraphs 1-10, above, evidence the fact that the Respondents' filing with the Division is unfairly discriminatory because the price differentials fail to reflect equitably the differences in expected losses and expenses. Such facts provide grounds for the disapproval of the loss cost filing made by the Respondents pursuant to Tenn. Code Ann. § 56-5-308(b)(2).

COUNT THREE

20. The Division restates the facts as alleged in Paragraphs 1-10, above, and incorporates them by reference herein.

21. Tenn. Code Ann. § 56-5-320(b) provides, in pertinent part, that each workers' compensation insurer shall be a member of the workers' compensation insurance rate service organization. Each workers' compensation insurer shall adhere to the policy forms and rating rules filed by such designated service organization.

22. The facts in Paragraphs 1-10, above, evidence the fact that as a workers' compensation insurer, the Respondents are required to be a member of the commissioner's designated rate service organization, which is NCCI. As a member of NCCI, the Respondents are required to adhere to the rating rules filed by NCCI. The terrorism charge filed by Respondents is inconsistent with that filed by NCCI. Such facts provide grounds for the disapproval of the rate filings made by the Respondents pursuant to Tenn. Code Ann. § 56-5-320(b).

WHEREFORE, PREMISES CONSIDERED, the Division requests the following relief:

1. That the Commissioner disapprove the rate filing No. AIC-03-WC-03 filed by the Respondents;
2. That the Respondents be ordered to cease and desist further use of the rate; and
3. For such other relief as the Commissioner may deem just and proper.

Respectfully submitted,



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My Commission Expires: Sept 20, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent via United States Certified Mail, Return Receipt Requested to:

AIU Ins Co

70 Pine Street

New York, NY 10270

Receipt No. 7001 2510 0006 0060 4060

American Home Assurance Co

70 Pine Street

New York, NY 10270

Receipt No. 7001 2510 0006 0060 4077

American International South Ins Co

70 Pine Street

New York, NY 10270

Receipt No. 7001 2510 0006 0060 4084

Birmingham Fire Ins Co of PA

70 Pine Street

New York, NY 10270

Receipt No. 7001 2510 0006 0060 4091

Commerce and Industry Ins Co

70 Pine Street

New York, NY 10270

Receipt No. 7001 2510 0006 0060 4107

Granite State Ins Co

70 Pine Street

New York, NY 10270

Receipt No. 7001 2510 0006 0060 4114

Illinois National Ins Co

500 West Madison Street

Chicago, IL 60606-2511

Receipt No. 7001 2510 0006 0060 4121

The Ins Co of the State of PA

70 Pine Street

New York, NY 10270

Receipt No. 7001 2510 0006 0060 4138

National Union Fire Ins Co of LA
PO Drawer 15989
Baton Rouge, LA 70895-5989
Receipt No. 7001 2510 0006 0060 4145

National Union Fire Ins Co of Pittsburgh
70 Pine Street
New York, NY 10270
Receipt No. 7001 2510 0006 0060 4152

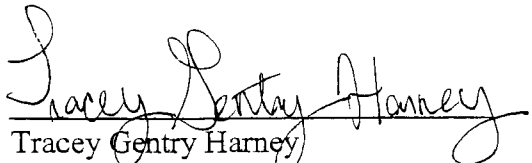
New Hampshire Ins Co
70 Pine Street
New York, NY 10270
Receipt No. 7001 2510 0006 0060 4169

Also sent United States Mail, First Class, Postage Prepaid to:

Sharon Roberson, Esq.
American General Life and Accident Ins. Co.
265 N. American General Center
Nashville, Tennessee 37250

Chris Spano
Senior Filings Analyst
American International Companies
175 Water Street 17th Floor
New York, NY 10038

This the 20th day of February, 2004.


Tracey Gentry Harney
Certifying Attorney